

STATE OF MICHIGAN
COURT OF APPEALS

HAISAM FARRAN,

Plaintiff-Appellee,

v

WAYNE COUNTY and WAYNE COUNTY
TREASURER,

Defendants-Appellants.

UNPUBLISHED

September 13, 2005

No. 261185

Court of Claims

LC No. 04-000145-MT

Before: Meter, P.J., and Murray and Schuette, JJ.

PER CURIAM.

Defendants appeal by leave granted from an order denying their motion for summary disposition. The Court of Claims held that plaintiff's lawsuit to set aside a tax foreclosure sale was not barred by the two-year limitation period found in MCL 211.78l because the Servicemembers Civil Relief Act (SCRA), 50 USC App § 501 *et seq.*, served to extend the limitation period. We affirm.

The Wayne Circuit Court entered a judgment of foreclosure with regard to plaintiff's property on March 4, 2002. Plaintiff, who was deployed overseas as part of his military service at the time of the foreclosure proceedings, attempted, by way of a motion in the circuit court, to set aside the foreclosure after the two-year limitation period contained in MCL 211.78l(3) had passed. According to the parties' appellate briefs,¹ the circuit court denied plaintiff's motion as untimely, and plaintiff then raised the argument that the SCRA served to extend the two-year limitation period. Again according to the parties' briefs,² the court rejected plaintiff's argument, holding that the doctrine of res judicata barred plaintiff's argument because the SCRA issue could have been raised at the time of plaintiff's initial motion.

¹ The rationales for the circuit court's rulings are not included in the lower court record.

² See footnote 1, *supra*.

Subsequently, plaintiff filed the instant case in the Court of Claims, alleging that he should be allowed to redeem the property or obtain money damages³ because of the “saving provisions”⁴ of the SCRA.⁵ Defendants moved for summary disposition under MCR 2.116(C)(7), arguing that plaintiff’s claims were barred by the two-year limitation period. The Court denied defendants’ motion, finding that the case of *Conroy v Aniskoff*, 507 US 511; 113 S Ct 1562; 123 L Ed 2d 229 (2003), was directly applicable and that the SCRA did indeed serve to extend the applicable limitation period in this case.

Defendants filed a motion for interlocutory leave to appeal in this Court. This Court denied the motion. After a federal court concluded, in a separate case, that the SCRA did not apply to plaintiff’s claims, defendants filed a motion for reconsideration in this Court. The Court granted the motion and granted defendants leave to appeal.

Defendants argue that the Court of Claims should have granted their motion for summary disposition. We review de novo a court’s decision with regard to a motion for summary disposition. *Spiek v Michigan Dep’t of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998).

We first note that we agree with defendants that § 561 of the SCRA – one of the two provisions cited by plaintiff – does not apply to plaintiff’s situation.

50 USC App § 561 states, in part:

(a) Application

This section applies in any case in which a tax or assessment, whether general or special (other than a tax on personal income), falls due and remains unpaid before or during a period of military service with respect to a servicemember’s—

(1) personal property (including motor vehicles); or

(2) *real property occupied for dwelling, professional, business, or agricultural purposes* by a servicemember or the servicemember’s dependents or employees—

³ MCL 211.781 indicates that money damages are the only relief available, under some circumstances, to remedy an improper foreclosure sale.

⁴ There are two separate provisions of the SCRA that are potentially applicable to plaintiff’s claim, as discussed later in this opinion.

⁵ Plaintiff quoted the language of 50 USC App § 561(b)(1) in his complaint but mislabeled the quoted section as 50 USC § 525. The language of 50 USC App § 561(b)(1) is set forth later in this opinion. Plaintiff also quoted the language of 50 USC App § 561(c) in his complaint but mislabeled the quoted section as 50 USC § 407(c). The language of 50 USC App § 561(c) is also set forth later in this opinion.

- (A) before the servicemember's entry into military service; and
- (B) during the time the tax or assessment remains unpaid.

(b) Sale of property

(1) Limitation on sale of property to enforce tax assessment
Property described in subsection (a) may not be sold to enforce the collection of such tax or assessment except by court order and upon the determination by the court that military service does not materially affect the servicemember's ability to pay the unpaid tax or assessment.

(2) Stay of court proceedings

A court may stay a proceeding to enforce the collection of such tax or assessment, or sale of such property, during a period of military service of the servicemember and for a period not more than 180 days after the termination of, or release of the servicemember from, military service.

(c) Redemption

When property described in subsection (a) is sold or forfeited to enforce the collection of a tax or assessment, a servicemember shall have the right to redeem or commence an action to redeem the servicemember's property during the period of military service or within 180 days after termination of or release from military service. This subsection may not be construed to shorten any period provided by the law of a State (including any political subdivision of a State) for redemption. [Emphasis added.]

As stated in *Shinholster v Annapolis Hosp*, 471 Mich 540, 548-549; 685 NW2d 275 (2004):

This Court's primary task in construing a statute is to discern and give effect to the intent of the Legislature. The words of a statute provide the most reliable evidence of [the Legislature's] intent In discerning legislative intent, a court must give effect to every word, phrase, and clause in a statute The Court must consider both the plain meaning of the critical word or phrase as well as its placement and purpose in the statutory scheme. The statutory language must be read and understood in its grammatical context, unless it is clear that something different was intended. If the language of a statute is unambiguous, the Legislature must have intended the meaning clearly expressed, and the statute must be enforced as written. [Internal citations and quotations omitted.]

50 USC App § 561 states that it applies to “real property occupied for dwelling, professional, business, or agricultural purposes by a servicemember or the servicemember's dependents or employees” Here, plaintiff admitted in his complaint that the property at issue consisted of “three vacant lots located in the City of Dearborn.” There is simply no evidence that the property was “occupied for dwelling, professional, business, or agricultural

purposes. . . .” 50 USC App § 561(a)(2). As noted in *Shinholster, supra* at 549, “[i]n discerning legislative intent, a court must give effect to every word, phrase, and clause in a statute” We therefore assume that the word “occupied” was *purposefully* added to the statute. Because the land in question was not “occupied” for “dwelling, professional, business, or agricultural purposes,” 50 USC App § 561 did not serve to extend the limitation period in this case.

The Court of Claims concluded that the SCRA did, however, apply, and it found that *Conroy, supra*, was “directly on point” *Conroy* dealt with a different section of the SCRA – a section that plaintiff also cites in his appellate brief. Specifically, *Conroy* dealt with 50 USC App § 525 (now 50 USC App § 526). 50 USC App § 526 states, in part:

(a) Tolling of statutes of limitation during military service

The period of a servicemember's military service may not be included in computing any period limited by law, regulation, or order for the bringing of any action or proceeding in a court, or in any board, bureau, commission, department, or other agency of a State (or political subdivision of a State) or the United States by or against the servicemember or the servicemember's heirs, executors, administrators, or assigns.

(b) Redemption of real property

A period of military service may not be included in computing any period provided by law for the redemption of real property sold or forfeited to enforce an obligation, tax, or assessment.

In *Conroy, supra* at 514, the Court held that, under the plain language of the statute, a period of military service shall not be included in computing a redemption period for foreclosed property. Moreover, the land at issue in *Conroy* was vacant land, like the land at issue in the instant case. *Conroy, supra* at 513; see also 1993 WL 751693, p 20 (a transcript of the oral arguments before the Supreme Court in *Conroy* during which the nature of the property at issue was discussed). Under *Conroy* and under 50 USC App § 526, plaintiff's argument in opposition to defendants' summary disposition motion is substantively meritorious.⁶

Defendants argue that plaintiff's SCRA argument (notwithstanding its substantive correctness) was barred by the doctrine of res judicata, given the existence of the Wayne Circuit Court ruling. We decline to address this issue, as did the trial court, because it was not properly

⁶ While plaintiff's argument below with regard to 50 USC App § 526 was presented in an unclear manner and was somewhat hard to decipher, it is clear that, by discussing the *Conroy* decision and by mentioning the statute – 50 USC App § 525 (now 50 USC App § 526) – cited in *Conroy*, plaintiff adequately raised the argument both in his complaint and in his brief in opposition to defendants' motion for summary disposition. Similarly, plaintiff's argument on appeal is somewhat unclear, yet sufficient, with regard to 50 USC App § 526.

supported below. Indeed, defendants filed no transcripts or other documentary evidence indicating that plaintiff could have raised the argument earlier but failed to do so or indicating the rationale for the circuit court's rulings. The circuit court orders filed by defendants state merely that the motion to set aside the foreclosure sale was denied and that defendants' motion for summary disposition was granted. We conclude that the documentary evidence was simply insufficient to support the claim of res judicata. For example, it is not clear from the filed evidence that a decision *on the merits* was made by the circuit court. See *Adair v State of Michigan*, 470 Mich 105, 121; 680 NW2d 386 (2004) (discussing the prerequisites for applying the doctrine of res judicata). As noted by the Court of Claims, "If . . . facts . . . aren't in here, I'm not going to consider them." While defendants attach additional evidence to their appellate brief, it is well established that a party may not enlarge the record on appeal. *Kent Co Aeronautic Bd v Dep't of State Police*, 239 Mich App 563, 579-580; 609 NW2d 593 (2000).

Affirmed and remanded for further proceedings.

/s/ Patrick M. Meter
/s/ Christopher M. Murray
/s/ Bill Schuette